



April 6, 2001

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## ENGROSSED HOUSE BILL No. 1342

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DIGEST OF HB 1342 (Updated April 4, 2001 6:56 PM - DI 87)

**Citations Affected:** IC 13-11; IC 13-26; noncode.

**Synopsis:** Regional water and sewer districts. Provides that a regional water, sewage, or solid waste district may not require a property owner to connect to the district's sewer system if: (1) the property owner's septic system was installed not more than five years before the district's sewer system first became available for connection; (2) the property owner's septic system was new at the time of installation and was approved by the local health department; (3) the property owner provides certification from the local health department or the department's designee that the septic system is functioning satisfactorily. Provides that the exemption from mandatory connection extends for a period of three years beginning on the date the district's sewer system first becomes available for connection. Provides that a district may require a property owner who otherwise qualifies for the connection exemption to connect to the district's sewer system if the district credits part of the cost of the property owner's septic system against the debt service portion of the property owner's monthly bill. Provides an appeal process if: (1) the district's rates and charges are greater than 5% per year; and (2) a petition is filed with the district authority within thirty days of the rates and charges ordinance being adopted.

**Effective:** July 1, 2001.

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### Lytle, Mellinger

(SENATE SPONSORS — NUGENT, LEWIS, JACKMAN)

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January 9, 2001, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

February 20, 2001, amended, reported — Do Pass.

February 26, 2001, read second time, ordered engrossed.

February 27, 2001, engrossed. Read third time, passed. Yeas 84, nays 8.

#### SENATE ACTION

March 5, 2001, read first time and referred to Committee on Governmental and Regulatory Affairs.

April 5, 2001, amended, reported favorably — Do Pass.

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EH 1342—LS 7124/DI 77+



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April 6, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## ENGROSSED HOUSE BILL No. 1342

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A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 13-11-2-199.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2001]: **Sec. 199.5. "Septic tank soil**  
4 **absorption system", for purposes of IC 13-26-5-2.5, means pipes**  
5 **laid in a system of trenches or elevated beds, into which the effluent**  
6 **from the septic tank is discharged for soil absorption, or similar**  
7 **structures.**

8       SECTION 2. IC 13-26-5-2 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. A district may do the  
10 following:

- 11       (1) Sue or be sued.  
12       (2) Make contracts in the exercise of the rights, powers, and  
13       duties conferred upon the district.  
14       (3) Adopt and alter a seal and use the seal by causing the seal to  
15       be impressed, affixed, reproduced, or otherwise used. However,  
16       the failure to affix a seal does not affect the validity of an  
17       instrument.

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- (4) Adopt, amend, and repeal the following:
- (A) Bylaws for the administration of the district's affairs.
  - (B) Rules and regulations for the following:
    - (i) The control of the administration and operation of the district's service and facilities.
    - (ii) The exercise of all of the district's rights of ownership.
- (5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.
- (6) Assume in whole or in part any liability or obligation of:
- (A) a person;
  - (B) a nonprofit water, sewage, or solid waste project system; or
  - (C) an eligible entity;
- including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.
- (7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:
- (A) The payment of the expenses of the district.
  - (B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
  - (C) The payment of principal or interest on the district's obligations.
  - (D) To fulfill the terms of agreements made with:
    - (i) the purchasers or holders of any obligations; or
    - (ii) a person or an eligible entity.
- (8) **Except as provided in section 2.5 of this chapter,** require connection to the district's sewer system of property producing sewage or similar waste and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:
- (A) there is an available sanitary sewer within three hundred (300) feet of the property line; and

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- 1 (B) the district has given written notice by certified mail to the  
 2 property owner at the address of the property at least ninety  
 3 (90) days before a date for connection to be stated in the  
 4 notice.
- 5 (9) Provide by ordinance for reasonable penalties for failure to  
 6 connect and also apply to the circuit or superior court of the  
 7 county in which the property is located for an order to force  
 8 connection, with the cost of the action, including reasonable  
 9 attorney's fees of the district, to be assessed by the court against  
 10 the property owner in the action.
- 11 (10) Refuse the services of the district's facilities if the rates or  
 12 other charges are not paid by the user.
- 13 (11) Control and supervise all property, works, easements,  
 14 licenses, money, contracts, accounts, liens, books, records, maps,  
 15 or other property rights and interests conveyed, delivered,  
 16 transferred, or assigned to the district.
- 17 (12) Construct, acquire by purchase or otherwise, operate, lease,  
 18 preserve, and maintain works considered necessary to accomplish  
 19 the purposes of the district's establishment within or outside the  
 20 district and enter into contracts for the operation of works owned,  
 21 leased, or held by another entity, whether public or private.
- 22 (13) Hold, encumber, control, acquire by donation, purchase, or  
 23 condemnation, construct, own, lease as lessee or lessor, use, and  
 24 sell interests in real and personal property or franchises within or  
 25 outside the district for:
- 26 (A) the location or protection of works;  
 27 (B) the relocation of buildings, structures, and improvements  
 28 situated on land required by the district or for any other  
 29 necessary purpose; or  
 30 (C) obtaining or storing material to be used in constructing and  
 31 maintaining the works.
- 32 (14) Upon consent of two-thirds (2/3) of the members of the  
 33 board, merge or combine with another district into a single district  
 34 on terms so that the surviving district:
- 35 (A) is possessed of all rights, franchises, and authority of the  
 36 constituent districts; and  
 37 (B) is subject to all the liabilities, obligations, and duties of  
 38 each of the constituent districts, with all rights of creditors of  
 39 the constituent districts being preserved unimpaired.
- 40 (15) Provide by agreement with another eligible entity for the  
 41 joint construction of works the district is authorized to construct  
 42 if the construction is for the district's own benefit and that of the

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other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.

(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:

(A) The distribution or purification of water.

(B) The collection or treatment of sanitary sewage.

(C) The collection, disposal, or recovery of solid waste.

(17) Make provision for, contract for, or sell the district's byproducts or waste.

(18) Exercise the power of eminent domain.

(19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:

(A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and

(B) the cost is determined by the board to be less than that of purchase or condemnation;

the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.

(20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.

(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.

(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:

(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or

(B) pay adequate compensation for the property.



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(23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

SECTION 3. IC 13-26-5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2.5. (a) As used in this section, "septic tank soil absorption system" has the meaning set forth in IC 13-11-2-199.5.**

**(b) Subject to subsection (e) and except as provided in subsection (f), a property owner is exempt from the requirement to connect to a district's sewer system and to discontinue use of a septic tank soil absorption system if the following conditions are met:**

**(1) The property owner's septic tank soil absorption system was installed not more than five (5) years before the district's sewer system first became available for connection.**

**(2) The property owner's septic tank soil absorption system was new at the time of installation and was approved in writing by the local health department.**

**(3) The property owner, at the property owner's own expense, obtains and provides to the district a certification from the local health department or the department's designee that the septic tank soil absorption system is functioning satisfactorily. However, if the local health department does not issue a certificate indicating that the septic tank soil absorption system is functioning satisfactorily, the condition set forth in this subdivision is met if the property owner, at the property owner's own expense, has the septic tank soil absorption system reinspected by an individual registered as a professional engineer under IC 25-31, and the registered professional engineer issues certification that the septic system is functioning satisfactorily.**

**(4) The property owner provides the district with:**

**(A) the written notification of potential qualification for the exemption described in subsection (c); and**

**(B) the certification described in subdivision (3); within the time limits set forth in subsection (c).**

**(c) To qualify for an exemption under this section, a property owner must:**

**(1) within thirty (30) days after the date of the written notice given to the property owner under subsection (g) requiring the property owner to discontinue use of a septic tank soil absorption system and connect to the district's sewer system,**

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1 notify the district in writing that the property owner qualifies  
2 for the exemption under this section; and

3 (2) within sixty (60) days after the district receives the written  
4 notice provided under subdivision (1), provide the district  
5 with the certification required under subsection (b)(3).

6 (d) If a property owner, within the time allowed under  
7 subsection (c), notifies a district in writing that the property owner  
8 qualifies for the exemption under this section, the district shall,  
9 until the property owner's eligibility for an exemption under this  
10 section is determined, suspend the requirement that the property  
11 owner discontinue use of a septic tank soil absorption system and  
12 connect to the district's sewer system.

13 (e) A property owner who qualifies for the exemption provided  
14 under this section may not be required to connect to the district's  
15 sewer system for a period of three (3) years beginning on the date  
16 the district's sewer system first becomes available for connection.  
17 If ownership of the property passes from the owner who qualified  
18 for the exemption to another person during the exemption period,  
19 the exemption does not apply to the subsequent owner of the  
20 property.

21 (f) The district may require a property owner who qualifies for  
22 the exemption under this section to discontinue use of a septic tank  
23 soil absorption system and connect to the district's sewer system if  
24 the district credits the unamortized portion of the original cost of  
25 the property owner's septic tank soil absorption system against the  
26 debt service portion of the customer's monthly bill. The amount  
27 that the district must credit under this subsection is determined in  
28 STEP TWO of the following formula:

29 STEP ONE: Multiply the original cost of the property owner's  
30 septic tank soil absorption system by a fraction, the  
31 numerator of which is ninety-six (96) months minus the age in  
32 months of the property owner's septic system, and the  
33 denominator of which is ninety-six (96) months.

34 STEP TWO: Determine the lesser of four thousand eight  
35 hundred dollars (\$4,800) or the result of STEP ONE.

36 The district shall apportion the total credit amount as determined  
37 in STEP TWO against the debt service portion of the property  
38 owner's monthly bill over a period to be determined by the district,  
39 but not to exceed twenty (20) years, or two hundred forty (240)  
40 months.

41 (g) A district that has filed plans with the department to create  
42 or expand a sewage district shall, within ten (10) days after filing

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the plans, provide written notice to affected property owners:

- (1) that the property owner may be required to discontinue the use of a septic tank soil absorption system;
- (2) that the property owner may qualify for an exemption from the requirement to discontinue the use of the septic tank soil absorption system; and
- (3) of the procedures to claim an exemption.

SECTION 4. IC 13-26-11-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 15. (a)** A district authority is established in each regional sewage district established under IC 13-26.

**(b)** The district authority of a regional sewage district consists of the following:

- (1) In the case of a regional sewage district located in one (1) county, the elected officials who are authorized to appoint the members of the board of trustees of that regional sewage district under IC 13-26-4-3.
- (2) In the case of a regional sewage district located in more than one (1) county, one (1) county executive member, appointed by that member's county executive, from each county in which the district is located.
- (3) In the case of a regional sewage district located in one (1) county, if:
  - (A) the authorities authorized to appoint the members of the board of trustees of the district do not include an elected official; or
  - (B) the members of the board of trustees of the district are elected by the voters under IC 13-26-4-2 instead of being appointed;
 the county executive of that county.

However, a person who serves on the board of trustees of a district may not be a member of the district authority.

**(b)** If a district adopts an ordinance increasing sewer rates and charges at a rate that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase before January 1, 2001, fifty (50) freeholders of the district or ten percent (10%) of the district's freeholders, whichever is fewer, may file a written petition objecting to the rates and charges of the district. A petition filed under this subsection must:

- (1) contain the name and address of each petitioner;



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(2) be filed with a member of the district authority, in the county where at least one (1) petitioner resides, not later than thirty (30) days after the district adopts the ordinance establishing the rates and charges; and

(3) set forth the grounds for the freeholder's objection.

(c) If a petition meeting the requirements of subsection (b) is filed, the district authority shall investigate and conduct a public hearing on the petition. If more than one (1) petition concerning a particular increase in rates and charges is filed, the district authority shall consider the objections set forth in all the petitions at the same public hearing.

(d) The district authority shall set the matter for public hearing not less than ten (10) business days but not later than twenty (20) business days after the petition has been filed. The district authority shall send notice of the hearing by certified mail to the district and the petitioner and publish the notice of the hearing in a newspaper of general circulation in each county in the district.

(e) Upon the date fixed in the notice, the district authority shall hear the evidence produced and determine whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in IC 13-26-11-9. The district authority, by a majority vote, shall:

- (1) sustain the ordinance establishing the rates and charges;
- (2) sustain the petition; or
- (3) make any other ruling appropriate in the matter.

(f) The order of the district authority may be appealed by the district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury and shall determine one (1) or both of the following:

- (1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.
- (2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in IC 13-26-11-9.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.

SECTION 5. [EFFECTIVE JULY 1, 2001] (a) IC 13-26-5-2.5 and IC 13-26-11-15, both as added by this act, do not apply to a regional sewage district established under:

- (1) IC 13-26;



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- 1           (2) IC 13-3-2 (before its repeal on July 1, 1996); or
- 2           (3) IC 19-3-1.1 (before its repeal on April 1, 1980);
- 3       **if the regional sewage district began construction or received final**
- 4       **bids on construction during 2001.**
- 5           (b) This SECTION expires July 1, 2002.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1342, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, line 13, delete "a registered professional engineer" and insert **"the department's designee"**.

Page 5, line 14, after "satisfactorily." insert **"However, if the local health department does not issue a certificate indicating that the septic system is functioning satisfactorily, the condition set forth in this subdivision is met if the property owner, at the property owner's own expense, has the septic system reinspected by an individual registered as a professional engineer under IC 25-31, and the registered professional engineer issues certification that the septic system is functioning satisfactorily."**

Page 5, line 22, delete "sixty (60)" and insert **"thirty (30)"**.

Page 5, line 23, delete "section 2(8) of this chapter" and insert **"subsection (g)"**.

Page 6, between lines 23 and 24, begin a new paragraph and insert:

**"(g) A district that has filed plans with the department to create or expand a sewage district shall, within ten (10) days after filing the plans, provide written notice to affected property owners:**

**(1) that the property owner may be required to discontinue the use of a septic system;**

**(2) that the property owner may qualify for an exemption from the requirement to discontinue the use of the septic system; and**

**(3) of the procedures to claim an exemption."**

Page 6, line 27, delete ""county executive"" and insert **""district authority""**.

Page 6, line 28, after "(1) county, the" delete "county" and insert **"elected officials who are authorized to appoint the members of the board of trustees of the district under IC 13-26-4-3."**

Page 6, delete line 29.

Page 6, between lines 33 and 34, begin a new line block indented and insert:

**"(3) If the district is located in one (1) county and:**

**(A) the authorities authorized to appoint the members of the board of trustees of the district do not include an elected official; or**

**(B) the members of the board of trustees of the district are**



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elected by the voters under IC 13-26-4-2 instead of being appointed;

the county executive of that county.

However, a person who serves on the board of trustees of a district may not be a member of the district authority."

Page 6, line 34, delete "establishing increased" and insert "increasing sewer".

Page 6, line 36, after "year" insert ",".

Page 6, line 36, delete "on" and insert "from the date of the district's last rate increase before".

Page 6, line 37, delete "a freeholder in the district" and insert "fifty (50) freeholders of the district or ten percent (10%) of the district's freeholders, whichever is fewer,".

Page 6, line 40, after "of" delete "the" and insert "each".

Page 6, line 41, delete "the county executive" and insert "a member of the district authority".

Page 6, line 41, after "where" delete "the" and insert "at least one (1)".

Page 6, line 42, delete "five (5) business" and insert "thirty (30)".

Page 7, line 5, delete "county executive" and insert "district authority".

Page 7, line 7, delete "county" and insert "district authority".

Page 7, line 8, delete "executive".

Page 7, line 10, delete "county executive" and insert "district authority".

Page 7, line 12, delete "county executive" and insert "district authority".

Page 7, line 14, delete "the largest" and insert "a".

Page 7, line 16, delete "county executive" and insert "district authority".

Page 7, line 17, after "produced" insert "and determine whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in IC 13-26-11-9".

Page 7, line 17, delete "county executive" and insert "district authority".

Page 7, line 22, before "The" begin a new paragraph and insert: "(f)".

Page 7, line 22, delete "county executive is final and conclusive upon all" and insert "district authority may be appealed by the district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury

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and shall determine one (1) or both of the following:

(1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.

(2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in IC 13-26-11-9.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed."

Page 7, delete line 23.

Page 7, after line 23, begin a new paragraph and insert:

"SECTION 4. [EFFECTIVE JULY 1, 2001] (a) This SECTION does not apply to a county having a population of more than twenty-three thousand six hundred fifty (23,650) but less than twenty-three thousand seven hundred (23,700).

(b) IC 13-26-5-2.5 and IC 13-26-11-15, both as added by this act, do not apply to a regional sewage district established under:

(1) IC 13-26;

(2) IC 13-3-2 (before its repeal on July 1, 1996); or

(3) IC 19-3-1.1 (before its repeal on April 1, 1980);

if the regional sewage district began construction or received final bids on construction during 2001.

(c) This SECTION expires July 1, 2002."

and when so amended that said bill do pass.

(Reference is to HB 1342 as introduced.)

LYTLE, Chair

Committee Vote: yeas 13, nays 0.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred House Bill No. 1342, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-199.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 199.5. "Septic tank soil absorption system", for purposes of IC 13-26-5-2.5, means pipes laid in a system of trenches or elevated beds, into which the effluent from the septic tank is discharged for soil absorption, or similar structures."**

Page 4, line 41, delete ""septic system" and insert ""septic tank soil absorption system" has the meaning set forth in IC 13-11-2-199.5".

Page 4, delete line 42.

Page 5, line 4, after "septic" insert "**tank soil absorption**".

Page 5, line 5, after "septic" insert "**tank soil absorption**".

Page 5, line 8, after "septic" insert "**tank soil absorption**".

Page 5, line 14, after "septic" insert "**tank soil absorption**".

Page 5, line 16, after "septic" insert "**tank soil absorption**".

Page 5, line 18, after "septic" insert "**tank soil absorption**".

Page 5, line 32, after "septic" insert "**tank soil absorption**".

Page 6, line 2, after "septic" insert "**tank soil absorption**".

Page 6, line 13, after "septic" insert "**tank soil absorption**".

Page 6, line 16, after "septic" insert "**tank soil absorption**".

Page 6, line 21, after "septic" insert "**tank soil absorption**".

Page 6, line 36, after "septic" insert "**tank soil absorption**".

Page 6, line 38, after "septic" insert "**tank soil absorption**".

Page 7, line 1, delete "As used in this section," and insert: "**A district authority is established in each regional sewage district established under IC 13-26.**

(b) The district authority of a regional sewage district consists of the following:

(1) In the case of a regional sewage district located in one (1) county, the elected officials who are authorized to appoint the members of the board of trustees of that regional sewage district under IC 13-26-4-3.

(2) In the case of a regional sewage district located in more than one (1) county, one (1) county executive member,



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appointed by that member's county executive, from each county in which the district is located.

**(3) In the case of a regional sewage district located in one (1) county, if:**

**(A) the authorities authorized to appoint the members of the board of trustees of the district do not include an elected official; or**

**(B) the members of the board of trustees of the district are elected by the voters under IC 13-26-4-2 instead of being appointed;**

**the county executive of that county."**

Page 7, delete lines 2 through 17.

Page 8, line 25, delete "(a) This SECTION".

Page 8, delete lines 26 through 28.

Page 8, run in lines 25 through 29.

Page 8, line 29, delete "(b)" and insert "**(a)**".

Page 8, line 36, delete "(c)" and insert "**(b)**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1342 as printed February 21, 2001.)

MERRITT, Chairperson

Committee Vote: Yeas 9, Nays 0.

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